BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and

Complaint Against

MICHELLE R. CLOUTHIER, RRT,

Respondent.

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Case No. 19-24637-1

FILED

JUN 1 0 2019

NEVADA STATE BOARD OF MEDICAL EXAMINERS By:

SETTLEMENT AGREEMENT

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), by and through Donald K. White, Esq., Deputy General Counsel for the Board and attorney for the IC, and Michelle R. Clouthier, RRT (Respondent), a licensed respiratory therapist in Nevada, by and through her counsel, Nicholas M. Wooldridge, Esq., hereby enter into this Settlement Agreement (Agreement) based on the following:

A. Background

- 1. Respondent is a respiratory therapist currently licensed in active status by the Board pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC) (collectively, the Medical Practice Act), to practice respiratory care in Nevada since December 14, 2001 (License No. RC363).
- 2. On January 15, 2019, in Case No. 19-24637-1, the IC filed a formal Complaint (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, this Complaint alleges one (1) violation of NRS 630.3062(1)(a) for failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient

¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, Respondent's agreements and admissions are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, state or federal civil or criminal proceeding, any state or federal court proceeding, or any credentialing or privileges matter.

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(Count I), and one (1) violation of NRS 630.304(1) for obtaining, maintaining or renewing or attempting to obtain, maintain or renew a license to practice medicine by bribery, fraud or misrepresentation or by any false, misleading, inaccurate or incomplete statement (Count II).

- By reason of the foregoing, Respondent is subject to discipline by the Board as 3. provided in NRS 630.352.
- 4. Respondent was properly served with a copy of the Complaint, has reviewed and understands the Complaint, and has had the opportunity to consult with competent counsel concerning the nature and significance of the Complaint.
- Respondent is hereby advised of her rights regarding this administrative matter, and of 5. her opportunity to defend against the allegations in the Complaint. Specifically, Respondent has certain rights in this administrative matter as set out by the United States Constitution, the Nevada Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is contained in NRS Chapter 241, and the Nevada Administrative Procedure Act (APA) applicable to certain regulatory bodies, which is contained in NRS Chapters 233B and 622A. These rights include the right to a formal hearing on the allegations in the Complaint, the right to representation by counsel, at her own expense, in the preparation and presentation of her defense, the right to confront and crossexamine the witnesses and evidence against her, the right to written findings of fact, conclusions of law and order reflecting the final decision of the Board, and the right to judicial review of the Board's order, if the decision is adverse to her.
- Respondent understands that, under the Board's charge to protect the public by 6. regulating the practice of respiratory care, the Board may take disciplinary action against Respondent's license, including license probation, license suspension, license revocation and imposition of administrative fines, as well as any other reasonable requirement or limitation, if the Board concludes that Respondent violated one or more provisions of the Medical Practice Act.
- Respondent understands and agrees that this Agreement, by and between 7. Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the Board for consideration in open session at a duly noticed and scheduled meeting. Respondent understands that the IC shall advocate for the Board's approval of this Agreement, but that the

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Board has the right to decide in its own discretion whether or not to approve this Agreement. Respondent further understands and agrees that if the Board approves this Agreement, then the terms and conditions enumerated below shall be binding and enforceable upon her and the Board.

B. Terms & Conditions

NOW, THEREFORE, in order to resolve the matters addressed herein, i.e., the matters with regard to the Complaint, Respondent and the IC hereby agree to the following terms and conditions:

- 1. Jurisdiction. Respondent is, and at all times relevant to the Complaint has been, a respiratory therapist licensed to practice respiratory care in Nevada subject to the jurisdiction of the Board as set forth in the Medical Practice Act.
- 2. Representation by Counsel/Knowing, Willing and Intelligent Agreement. Respondent acknowledges she is represented by counsel, and wishes to resolve the matters addressed herein with counsel. Respondent agrees that if representation in this matter materially changes prior to entering into this Agreement and for the duration of this Agreement, that counsel for the IC will be timely notified of the material change. Respondent agrees that she knowingly, willingly and intelligently enters into this Agreement after full consultation with and the assistance of legal counsel.
- Waiver of Rights. In connection with this Agreement, and the associated terms 3. and conditions, Respondent knowingly, willingly and intelligently waives all rights in connection with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives all rights arising under the United States Constitution, the Nevada Constitution, the Medical Practice Act, the OML, the APA, and any other legal rights that may be available to her or that may apply to her in connection with the administrative proceedings resulting from the Complaint filed in this matter, including defense of the Complaint, adjudication of the allegations set forth in the Complaint, and imposition of any disciplinary actions or sanctions ordered by the Board. Respondent agrees to settle and resolve the allegations of the Complaint as set out by this Agreement, without a hearing or any further proceedings and without the right to judicial review.

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4. Acknowledgement of Reasonable Basis to Proceed. Respondent acknowledges that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act. The IC acknowledges Respondent is not admitting that the IC's claims/counts as alleged in the Complaint have merit. Respondent is agreeing to resolve this matter to avoid the costs of a hearing and potential subsequent litigation. Respondent asserts if this matter were to proceed to hearing, she has evidence, witnesses, expert witness(es) and defenses to the counts/claims alleged in the Complaint, but for the purposes of resolving the matter and for no other purpose, Respondent waives the presentation of evidence, witnesses, expert witnesses, and defenses in order to effectuate this Agreement.

- 5. Consent to Entry of Order. In order to resolve this Complaint pending against Respondent, Respondent hereby agrees that the Board may issue an order finding that Respondent engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act. Accordingly, the following terms and conditions are hereby agreed upon:
- Respondent admits to Count I, failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient (a violation of NRS 630.3062(1)(a)).
- Respondent will pay the costs and expenses incurred in the investigation and b. prosecution of this matter within one (1) year of the Board's acceptance, adoption and approval of this Agreement, the current amount being \$2,576.22, not including any costs that may be necessary to finalize this Agreement. An intital payment of \$214.69 will be due within sixty (60) calendar days of the Board's approval of this Agreement. Based on Respondent's current financial circumstances, payment of \$214.69 per month will be due on the first day of the month beginning on July 1, 2019, through June 1, 2020, and the first day of each month thereafter until satisfied in full.
- This Agreement shall be reported to the appropriate entities and parties as required by law, including, but not limited to, the National Practitioner Data Bank.
 - Respondent shall receive a Public Letter of Reprimand. d.

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Count II shall be dismissed with prejudice, and this Agreement shall encompass the e. resolution of the formal disciplinary case currently before the Board.

- 6. Release From Liability. In execution of this Agreement, Respondent understands and agrees that the State of Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents are immune from civil liability for any decision or action taken in good faith in response to information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against any or all of the persons, government agencies or entities named in this paragraph arising out of, or by reason of, this investigation, this Agreement, or the administration of the case referenced herein.
- 7. Procedure for Adoption of Agreement. The IC and counsel for the IC shall recommend approval and adoption of the terms and conditions of this Agreement by the Board in resolution of this Complaint. In the course of seeking Board acceptance, approval and adoption of this Agreement, counsel for the IC may communicate directly with the Board staff and the adjudicating members of the Board.

Respondent acknowledges that such contacts and communications may be made or conducted ex parte, without notice or opportunity to be heard on her part until the public Board meeting where this Agreement is discussed, and that such contacts and communications may include, but may not be limited to, matters concerning this Agreement, the Complaint and any and all information of every nature whatsoever related to this matter. The IC and its counsel agree that Respondent may appear at the Board meeting where this Agreement is discussed and, if requested, respond to any questions that may be addressed to the IC or the IC's counsel.

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- Effect of Acceptance of Agreement by Board. In the event the Board accepts, 8. approves and adopts this Agreement, the Board shall issue a final order, making this Agreement an order of the Board, and, pending full compliance with the terms herein, the case shall be closed and the remaining counts of the Complaint shall be dismissed with prejudice.
- 9. Effect of Rejection of Agreement by Board. In the event the Board does not accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and effect except as to the following agreement regarding adjudications: (1) Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this Agreement shall disqualify any member of the adjudicating panel of the Board from considering this Complaint and from participating in disciplinary proceedings against Respondent, including adjudication of this case; and (2) Respondent further agrees that she shall not seek to disqualify any such member absent evidence of bad faith.
- 10. Binding Effect. If approved by the Board, Respondent understands that this Agreement is a binding and enforceable contract upon Respondent and the Board.
- Forum Selection Clause. The parties agree that in the event either party is 11. required to seek enforcement of this Agreement in district court, the parties consent to such jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District Court, State of Nevada, Washoe County.
- Attorneys' Fees and Costs. The parties agree that in the event an action is 12. commenced in district court to enforce any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
- Failure to Comply With Terms. Should Respondent fail to comply with any term 13. or condition of this Agreement once the Agreement has been accepted, approved and adopted by the Board, the IC shall be authorized to immediately suspend Respondent's license to practice respiratory care in Nevada pending an Order to Show Cause Hearing, which will be duly noticed. Failure to comply with the terms of this Agreement, including failure to pay any fines, costs, expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may

OFFICE OF THE GENERAL COUNSEL

result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a). Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a condition of this Agreement may subject Respondent to civil collection efforts. Dated this ____ day of March, 2019. By: Donald K. White, Esq., Deputy General Counsel Attorney for the Investigative Committee day of March, 2019. Dated this LV CRIMINAL DEFENSE Nicholas M. Wooldridge, Esq. Attorney for Respondent Dated this day of March, 2019. Michelle R. Clouthier, RRT, Respondent

IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 7th day of June, 2019, with the final total amount of costs due of \$2,576.22

Rachakonda D. Prabhu, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS